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AUG 1 1984

IN THE SUPREME COURT OF THE UNITED STATES  
1984 Term

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No.

MICHAEL L. SCHREIBMAN  
Petitioner,

v.

GERALD M. O'DONNELL, TRUSTEE,  
Respondent.

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Petition For A Writ of Certiorari  
To The United States Court of Appeals  
For The Fourth Circuit

~~JURISDICTIONAL STATEMENT~~

MICHAEL L. SCHREIBMAN,  
For Petitioner, Pro Se  
1510 Forest Lane  
McLean, Virginia 22101  
Phone: 703/241-1106

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AFFIDAVIT OF SERVICE

I, MICHAEL L. SCHREIBMAN, depose and say that on the day of August 1984, I served the foregoing Petition For A Writ of Certiorari To The United States Court of Appeals For The Fourth Circuit, and accompanying Appendix, on all of the parties required to be served by depositing three copies of said documents in a United States post office, with first-class postage prepaid, addressed to Gerald M. O'Donnell at his office address 211 South Alfred Street, Alexandria, Virginia 22314.

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Michael L. Schreibman

Subscribed and sworn to before me,  
at McLean, Virginia, this      day of  
August 1984.

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NOTARY PUBLIC



## STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

The central issue in the case concerns the Petitioner's (Debtor below), constitutional personal property interests claimed exempt during proceedings under Chapter 13 of the Bankruptcy Code, and his constitutional right to raise and present all available legal defenses as well as the constitutional duty of the Court to consider and apply to the agreed upon facts the essential principles of law pertinent to the timeliness of the Trustee's objection to claimed exemptions. In affirming the ultimate conclusion of the District Court and the Bankruptcy Court, that the 20 day limitation for filing objections to claimed exemptions specified by Bankr. E.D. Va. Rule 23(C) (1981), was not applicable to proceedings under Chapter 13 and that the Trustee's objection first filed some seven months after completion of the Debtor's examination at the § 341 meeting and confirmation of the Chapter 13 plan, upon conversion of the case to Chapter 7, was therefore timely with reference to the Chapter 7 proceedings, the questions presented by the Appellate Court's decision are:

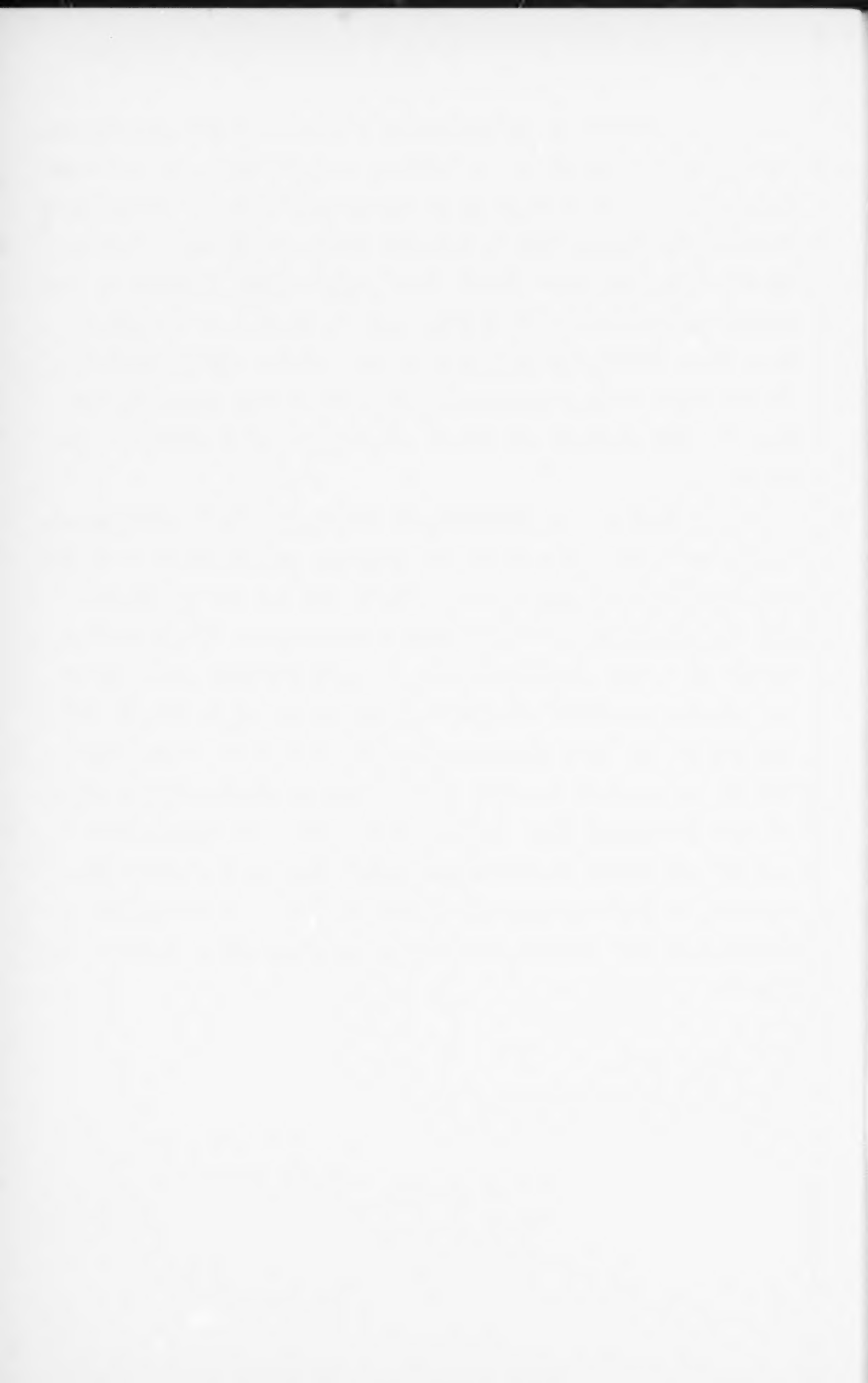
1. Whether in arriving at their ultimate conclusion, the lower courts invaded the Debtor's constitutional personal property interests in violation of the due process clause of the Fifth Amendment, when they failed and refused to consider and apply to the agreed upon facts and 20 day limitation for filing objections to claimed exemptions specified by Bankr. E.D. Va. Rule 23(C), the Debtor's meritorious legal defenses that were essential to the case which were raised and presented throughout?





2. Whether in arriving at their ultimate conclusion, the lower courts erred in failing and refusing to consider and apply to the agreed upon facts and 20 day limitation for filing objections to claimed exemptions specified by Bankr. E.D. Va. Rule 23(C), the legal right claimed by the Debtor pursuant to the provisions of 11 U.S.C. § 522(1), to file a list of property claimed exempt under Chapter 13 and have such property automatically set apart as exempt in the absense of timely objection by a party in interest?

3. Whether in arriving at their ultimate conclusion, the lower courts erred in failing and refusing to consider and apply to the agreed upon facts and 20 day limitation for filing objections to claimed exemptions specified by Bankr. E.D. Va. Rule 23(C), the legal defense claimed by the Debtor pursuant to the provisions of 11 U.S.C. § 348 and Bankr. R. 122, that conversion of a case from Chapter 13 to Chapter 7, does not effect a change in the date of the filing of the original petition, nor invalidate any action taken in the superseded case before its conversion to bankruptcy, or either revive or extend the limitation for filing objections to exemptions already set apart?



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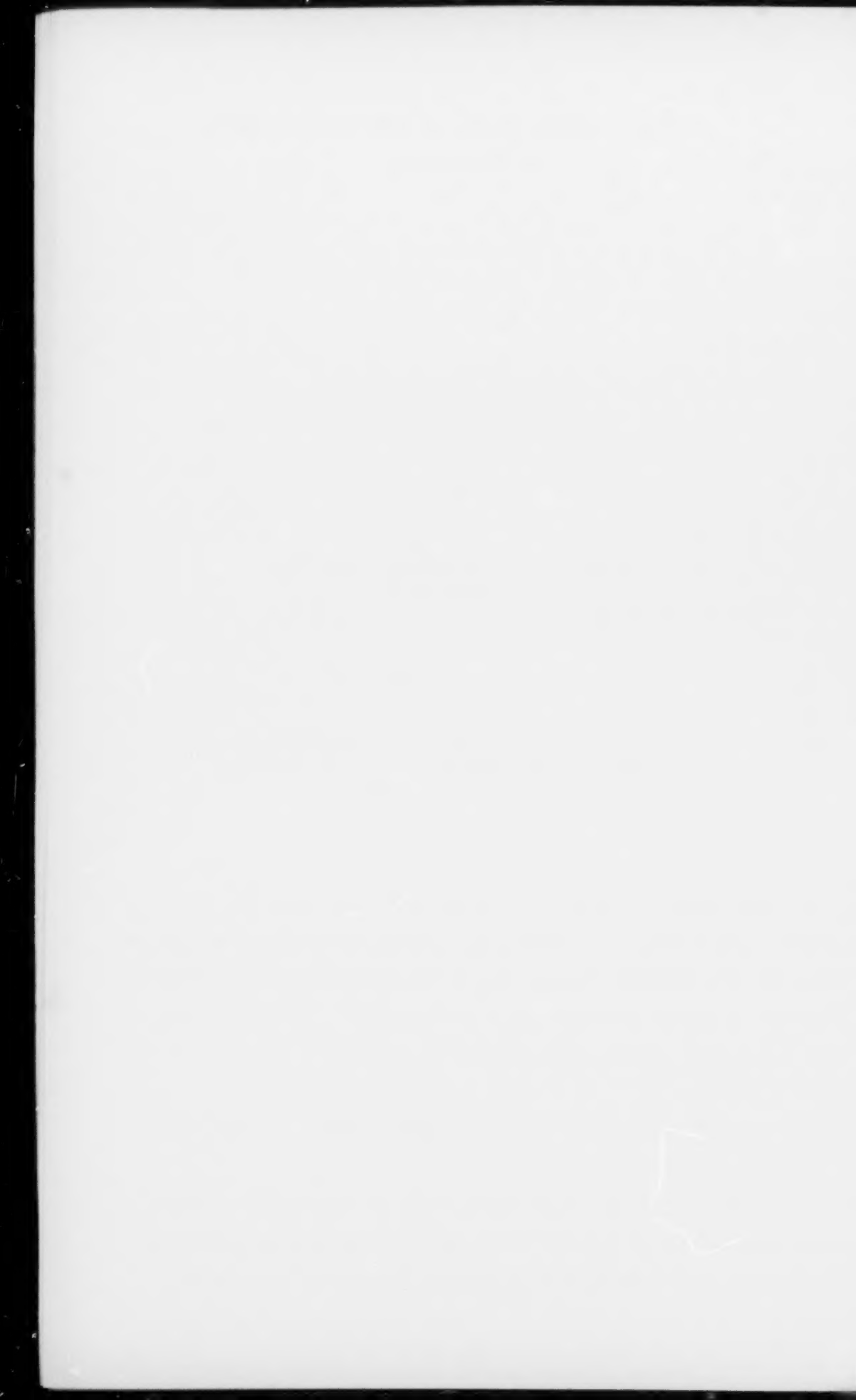
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Petition For A Writ of Certiorari  
To The United States Court of Appeals  
For The Fourth Circuit

Petitioner Michael L. Schreibman, on his own behalf, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in this case on March 12, 1984, rehearing denied by order entered May 3, 1984.

REFERENCE TO THE OFFICIAL AND UNOFFICIAL REPORTS

None of the opinions delivered in the courts below were published in either official or unofficial reports. Copies of the orders and opinions issued in the lower



courts appear in the Appendix annexed hereto: Order of the Bankruptcy Court entered March 28, 1983 (Ap A); Memorandum Opinion and Order of the District Court entered July 26, 1983 (Ap B); and Memorandum Order (per curiam) of the Appellate Court entered March 12, 1984 (Ap C).

## JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered March 12, 1984, a copy of which is appended to this petition as Appendix C. Rehearing was denied by order entered May 3, 1984, a copy of which is appended to this petition as Appendix D. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1) (1982).

## CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

### United States Constitution

U.S. CONST. amend. V.

"No person shall . . . be deprived of . . . property, without due process of law. . . ."

### Statutes

11 U.S.C. § 522(1) (1982)

"The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. . . . Unless a party in interest objects, the property claimed as exempt on such list is exempt."



11 U.S.C. § 348(a) (1982)

"Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but . . . does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief."

#### Rules

Bankr. Rule 122(2), 11 U.S.C. (1982)

"Unless otherwise directed by the court, lists, inventories, schedules, and statements filed in the superseded case, shall be deemed to be the schedules and statement of affairs filed in the bankruptcy case pursuant to Rule 108 and in full compliance therewith. . . ."

Bankr. E.D. Va. Rule 23(C), 11 U.S.C. (Supp. 1981)

"An objection to property claimed by the debtor under § 522(b) of the Bankruptcy Code must be filed within twenty (20) days after the debtor's examination at the 341 meeting, and copies of the objection forthwith must be mailed or delivered to the debtor and his attorney."

#### STATEMENT OF THE CASE

Michael L. Schreibman, Petitioner herein and Debtor below, seeks review of an order of the Bankruptcy Court entered March 28, 1983 (Ap A), sustaining an objection of the Trustee (Respondent herein) to the Debtor's claim of exemptions. The order was affirmed on appeal to the





District Court, by Memorandum Opinion and Order entered July 26, 1983 (Ap B). And the District Court order was, in turn, affirmed on appeal to the Appellate Court, by Order entered March 12, 1984 (Ap C), rehearing denied May 3, 1984 (Ap D).

The facts of the case are undisputed.<sup>1/</sup>

After completion of the Debtor's examination at the § 341 meeting, and after applying the "best interests of creditors test" pursuant to 11 U.S.C. § 1325(a)(4),<sup>2/</sup> (under which the Court must determine the liquidation value of all non-exempt property of the estate), the Bankruptcy Court confirmed the plan by order entered July 23, 1982. Thereafter, on February 7, 1983, the Debtor converted the case to Chapter 7.

On February 25, 1983, more than seven months after the Debtor's examination at the § 341 meeting, and confirmation of the Debtor's plan under Chapter 13, the Trustee filed his objection to exemptions claimed by the Debtor upon the schedules filed with the Chapter 13 petition. The Trustee's objection was filed pursuant to 11 U.S.C. § 522(1), on the grounds that the applicable State law does not authorize the claim of exemptions set out at 11 U.S.C. § 522(d). Prior to the time of the

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<sup>1/</sup> Respondent Trustee has expressly adopted the facts of the case set out here, in his brief filed before the District Court. He filed no brief in the Appellate Court.

<sup>2/</sup> The Bankruptcy Court determined in its order confirming the plan, "That holders of unsecured claims will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such holders would receive or retain if the estate of the debtor were liquidated under Chapter 7 of the Code on such date. . . ."



Trustee's objection, no party in interest had filed any objection to the Debtor's claim of exemptions.

The Debtor opposed the Trustee's objection, on the factual grounds that it was filed long after the time limit established pursuant to Bankr. E.D. Va. R. 23(C) (1981), without justification for the delay and to the grave prejudice of other persons. The facts were supported by the Debtor's uncontroverted affidavit, relevant documentary evidence, and memorandum. The Debtor opposed the Trustee's objection on the grounds that the Debtor had filed his list of claimed exemptions early in the Chapter 13 case, and absent timely objection the property claimed as exempt on such list was automatically exempt pursuant to 11 U.S.C. § 522(1). The Debtor also opposed the Trustee's objection on the legal grounds that conversion of the case from Chapter 13 to Chapter 7 does not revive or extend the time limitation for any objection to claimed exemptions, as provided by 11 U.S.C. § 348(a) and Bankr. R. 122.

Oral argument was heard by the Bankruptcy Court on March 22, 1983. At that time, the Trustee repeated his objection on the grounds that State law does not authorize the claimed exemptions. The Trustee also attempted to explain why he had filed no objection to the Debtor's claimed exemptions during the Chapter 13 proceedings, within the time limitation of Local Rule 23(C):

My position is very simply that I do not think the limitations of Rule 23 . . . apply to this specific circumstance, because in a 13 there really is no property interest. Property of the debtor reverts back to the debtor upon confirmation and there is no position there for the trustee to file his objections.



In addition there is, if nothing else, a continuation of that 341. The trustee, on a conversion of a 13 to a 7 is given the option whether or not he wishes to have another 341. I think the Court can consider that to be a course of continuation of the 341 hearing.

So, it's the position of myself as trustee that since we have not held a 341 in the Chapter 7 proceeding — and that is what we are dealing with here at this time -- that the filing is timely under Rule 23. . . .

The Debtor answered these arguments at the hearing with the statement that: "I believe that the Rule is very clear that the filing of the 7 doesn't change the exemptions . . . And that a year's delay in filing the objection is totally unwarranted." This statement was amplified by the Debtor's detailed affidavit and memorandum of law in opposition to the Trustee's objection to claimed exemptions, in which the factual and legal grounds for the Debtor's defenses were fully presented.

After taking the matter under consideration, the Bankruptcy Judge ruled, by order entered March 28, 1983, that the Debtor's claimed exemptions were not authorized by State law and that "the Objection of the Trustee was properly made and within the limitation of Amended Local Rule 23 upon this Chapter 7 proceeding." (Ap A). The Court did not explain its ruling by any written findings of fact or conclusions of law, nor did it consider in its order any of the legal defenses presented by the Debtor, as set out above. Nevertheless, during the hearing, the Bankruptcy Judge offered the following statement from the bench explaining his ruling in the case:

I have to agree with the trustee on the basis that the property does . . . revert in the debtor while he's in a 13. Therefore it would be very difficult for (the) trustee to object to exemptions when the



exemptions really are not effective yet. . . .

Accordingly . . . if it were necessary for the objection . . . to follow . . . any time limit, I feel that it would not run until the 341 hearing in the conversion.

(Ap A(1)). The Bankruptcy Court, therefore, sustained the Trustee's objection to the claimed exemptions, while entirely disregarding all of the legal grounds in opposition relied upon by the Debtor. (Ap A). The Debtor filed his notice of appeal to the District Court on April 7, 1983. Upon the briefs filed by the parties, the District Court affirmed the judgment of the Bankruptcy Court by Memorandum Opinion and Order entered July 26, 1983 (Ap B). The District Court opinion states in pertinent part:

It is true that the debtor in a Chapter 13 proceeding may claim exemption even though the property which may be the subject of the exemption is retained by the debtor. But it is for the very reason that he does retain the property that objections to an exemption may not be deemed necessary. Quite another situation arises once the proceedings are converted to one under Chapter 7. Then the property, other than validly exempt property, is not retained by the bankrupt, ne (sic) debtor. The propriety of claimed exemptions becomes very important; a new 341 meeting is appropriate; and the time for filing objections should relate to the new meeting.

(Ap B, at 5). Once again, the Court failed and refused to consider and apply any of the legal defenses raised and presented by the Debtor, that the claimed exemptions had been automatically set apart to the Debtor as exempt, absent timely objection in the Chapter 13 proceeding, pursuant to 11 U.S.C. § 522(1), and that the conversion to Chapter 7 did not revive or extend the time limitations for any objection to claimed exemptions, as provided by 11 U.S.C. § 348(a) and Bankr. R. 122. Notice of appeal to the





Appellate Court was filed August 26, 1983. Upon review of the record and the District Court opinion, the Appellate Court ruled that the appeal was "without merit." (Ap C, at 8). The judgment of the lower court was affirmed on the reasoning of the District Court, by order entered March 12, 1984 (Ap C). A petition for rehearing was denied by order entered May 3, 1984 (Ap D).

#### REASONS FOR ALLOWANCE OF THE WRIT

##### A.

THE DEBTOR HAS A LEGAL RIGHT PURSUANT TO THE PROVISIONS OF 11 U.S.C. §§ 522(1), 103(a), TO FILE A LIST OF PROPERTY CLAIMED EXEMPT UNDER CHAPTER 13, AND TO HAVE SUCH PROPERTY AUTOMATICALLY SET APART AS EXEMPT IN THE ABSENCE OF TIMELY OBJECTION BY A PARTY IN INTEREST; AND

##### B.

THE DEBTOR HAS A LEGAL DEFENSE PURSUANT TO THE PROVISIONS OF 11 U.S.C. § 348(a) AND BANKR. RULE 122, 11 U.S.C. (1982), THAT CONVERSION OF A CASE FROM CHAPTER 13 TO CHAPTER 7 DOES NOT EITHER REVIVE OR EXTEND THE TIME LIMITATION FOR FILING OBJECTIONS TO CLAIMED EXEMPTIONS SPECIFIED BY BANKR. E.D. VA. RULE 23(C), WHICH IS EFFECTIVE IN CHAPTER 13; AND

##### C.

THE LOWER COURTS INVADED THE DEBTOR'S CONSTITUTIONAL PROPERTY INTERESTS WITHOUT DUE PROCESS OF LAW - SO AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION - WHEN THEY FAILED AND REFUSED TO CONSIDER AND APPLY TO THE AGREED UPON FACTS AND RULE OF



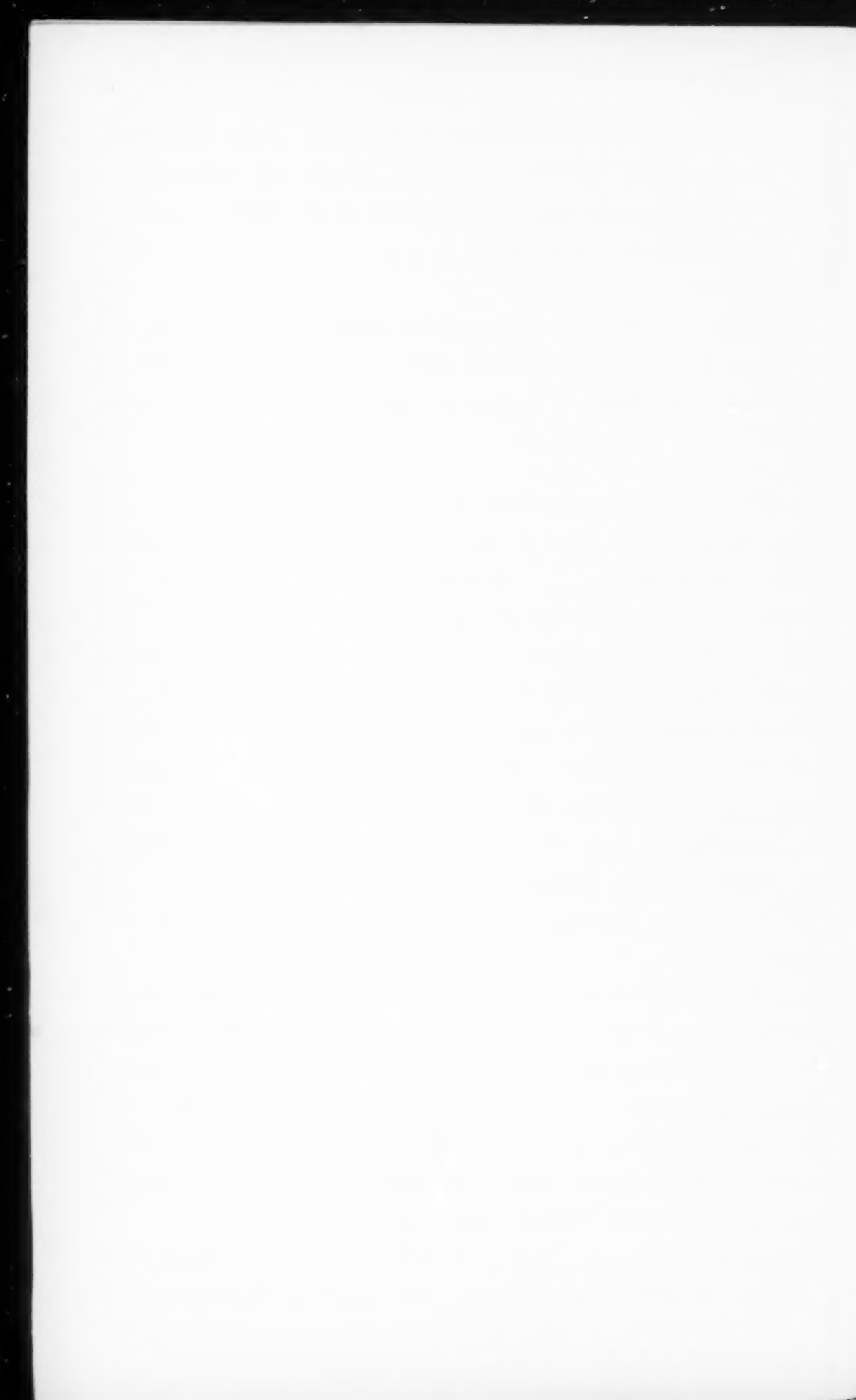
LIMITATIONS ON OBJECTIONS TO PROPERTY CLAIMED EXEMPT, THE DEBTOR'S MERITORIOUS LEGAL RIGHTS AND DEFENSES THAT WERE ESSENTIAL TO THE CASE, WHICH WERE RAISED AND PRESENTED THROUGHOUT.

These issues will be examined together, first, in respect to the merits of the Debtor's legal rights and defenses, and then in regard to the constitutional claim.

#### A.

Pursuant to the provisions of 11 U.S.C. § 522(1), "The debtor shall file a list of property that the debtor claims as exempt . . . Unless a party in interest objects, the property claimed as exempt on such list is exempt." A review of the legislative history, lower court cases, and policies upon which § 522(1) is predicated, clearly reveals that debtors in a Chapter 13 proceeding are entitled to full exemption rights. Transouth Financial Corp. v. Paris, 26 B.R. 184 (W.D. Tenn. 1982); In re Lincoln, 26 B.R. 14 (Bankr. W.D. Mich. 1982); Marsh v. First National Bank, 28 B.R. 270 (Bankr. S.D. Ohio 1983); In re Thurman, 20 B.R. 978 (Bankr. W.D. Tenn. 1982).

For the Chapter 13 debtor, the right to exemptions, among other effects, restores ownership of exempt property during a Chapter 13 proceeding, which would otherwise remain property of the estate, In re Lincoln, 26 B.R. at 17, and it limits both the liabilities and security interests which might otherwise impair the exempt property, to ensure the "fresh start" policy of the Code. Transouth Financial Corp., 26 B.R. at 185-87; Marsh, 28 B.R. at 272. In addition, the claim of exemptions



will, among other things, provide an important basis upon which the court must rely in order to apply the "best interests of creditors test" found in § 1325(a) (4), prior to confirmation of a plan under Chapter 13.<sup>3/</sup> Transouth Financial Corp., 26 B.R. at 187; In re Keckler, 3 B.R. 155, 159 (Bankr. N.D. Ohio 1980).

The valuable property rights and important policy considerations that are dependent upon the debtor's claim of exemptions in a Chapter 13 proceeding, render objections to such claims a necessary part of the Chapter 13 proceeding. The very same section of the Code that authorizes the claim of exemptions, provides that "Unless a party in interest objects, the property claimed as exempt on such list is exempt." § 522(1). The claim of exemptions enjoys a presumption of validity, so that absent a timely filing of an objection the property claimed as exempt on the debtor's list, is "automatically exempt." In re Mosley, 2 B.R. 375, 376 (Bankr. N.D. Ohio 1980); In re Noland, 13 B.R. 766, 771 (Bankr. D. Kan. 1981); In re Crump, 2 B.R. 222, 223 (Bankr. S.D. Fla 1981); In re Keckler, 3 B.R. at 159; Matter of Boyer, 7 B.R. 930, 931 (Bankr. D. Idaho 1981).

No time limit for filing objections to the debtor's claim of exemptions is specified in the Code. Such time limits will, therefore, be governed by the applicable Rules of Bankruptcy, or by applicable local rule or order. In re Langley, 21 B.R. 772, 773 (Bankr. D. Maine 1982). In the instant case, Bankr. E.D. Va. Rule 23(C) (1981), provides the applicable rule of limitations; it states:

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<sup>3/</sup> That test was applied in the instant case, as stated infra, note 2.



An objection to property claimed by the debtor under § 522(b) of the Bankruptcy Code must be filed within twenty (20) days after the debtor's examination at the 341 meeting

Time limitations for an objection to property claimed exempt by the debtor, are necessary to insure the efficiency and orderly administration of the estate, and to respond to the debtor's need for a prompt determination of his right to exempt property. See In re Brewer, 17 B.R. 186, 189 (Bankr. M.D. Tenn. 1982); In re Waters, 22 B.R. 387, 389 (Bankr. N.D. Texas 1982).

An objection to claimed exemptions, filed after the time limitation established by local rule will be denied, even where the claimed exemption is clearly not exempt under any provision of State law, and the property would have been included as property of the estate, but for the lack of timely objection. In re Waters, 22 B.R. at 388-89.

This is not to say, that the allowance of a late filing of an objection can never be made. Local Rule 23 (C) and similar provisions in orders issued by the Court "are not mandatory, inflexible rules which extinguish the sound discretion of the Bankruptcy Court." Ragsdale v. Genesco, Inc., 674 F.2d 277, 278 (4th Cir. 1982). In those cases where the time limitation for filing objections to claimed exemptions has been qualified by a provision for an extension of time, a late filing can be allowed. Id. at 278; In re Tevga, 35 B.R. 157, 159 (Bankr. D. Hawaii 1983). But the Bankruptcy Court's exercise of such "sound discretion" should depend upon the absence of prejudice to other parties and acceptable justification for the original failure to comply with the time limit. See Matter of Cipa, 11 B.R. 968, 970 (Bankr. W.D. Pa.





(1981), cited with approval in Ragsdale v. Genesco, Inc., 674 F.2d at 278; See Knox v. Liner, 463 F.2d 561, 566 (9th Cir. 1972).

It follows from this analysis that an untimely objection filed without any prior order authorizing the late filing, without any justification for the delay, and so as to prejudice other parties - as the agreed upon facts of the instant case conclusively state - must be dismissed. Cf. Ragsdale v. Genesco, 674 F.2d at 278; In re Novotny, 17 B.R. 196, 198 (Bankr. D. South Dakota 1982); In re Meyers, 17 B.R. 339, 340 (Bankr. D. South Dakota 1982).

In deciding upon the timeliness and legal sufficiency of the Trustee's objection to the Debtor's claim of exemptions, the District Court, consistent with the Bankruptcy Court and with the approval of the Appellate Court ruled that: "for the reason that (the debtor in a Chapter 13 proceeding) does retain the property . . . objections to an exemption may not be deemed necessary." (Ap B, at 5). This conclusion finds some support in the provisions of § 1306(b) of the Code that allow the debtor in a Chapter 13 proceeding to "remain in possession of all property of the estate," and in the provisions of § 1327(b) of the Code which provide that "confirmation of a plan vests all of the property of the estate in the debtor."

Nevertheless, in arriving at their ultimate conclusions, the lower courts entirely failed and refused to consider and apply the provisions of § 522(1) of the Code which are applicable to proceedings under Chapter 13. As discussed above, this section grants the debtor valuable property rights and includes important policy considerations, beyond the provisions of §§ 1306(b) and 1327(b).

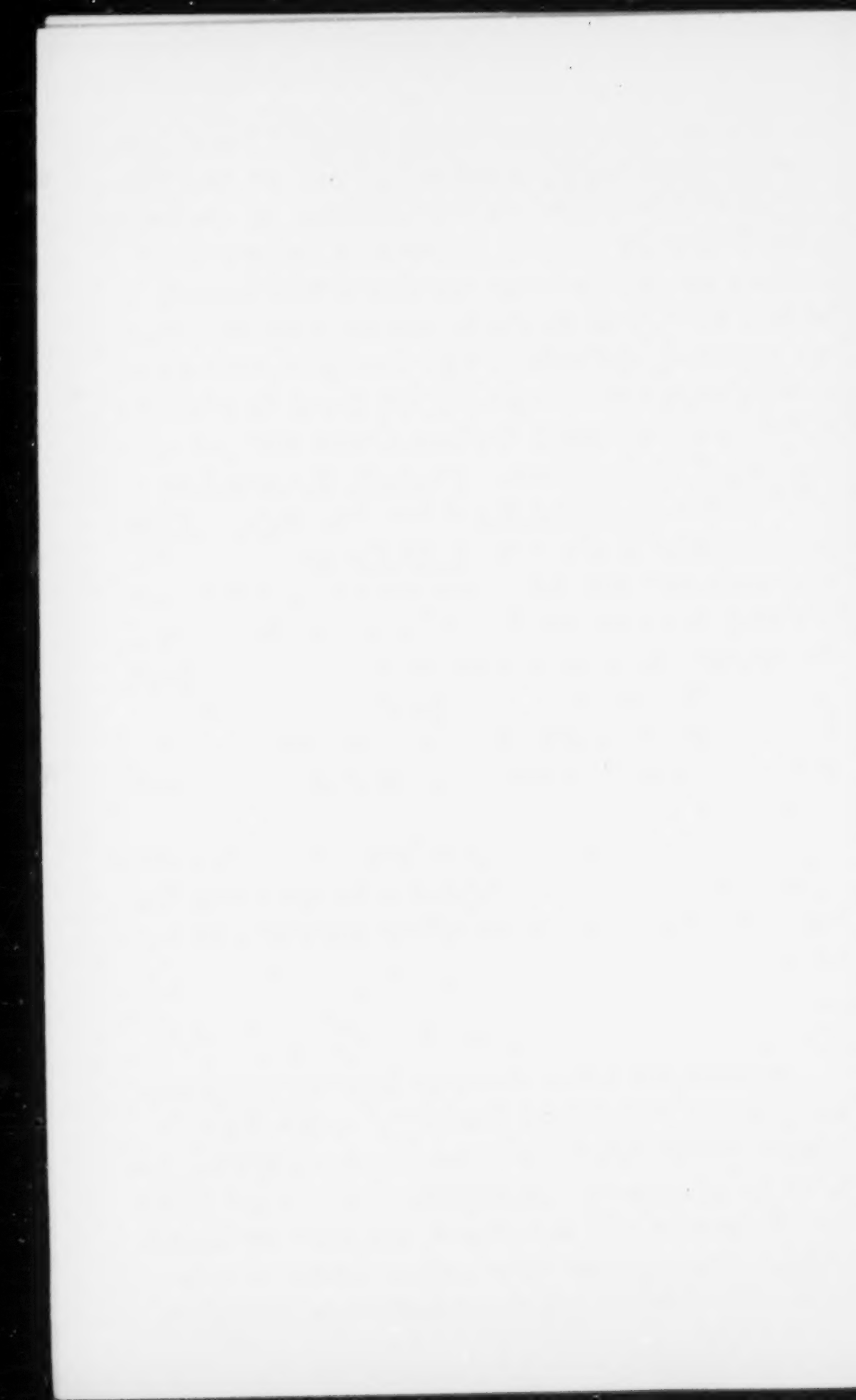


The mere fact that the debtor does generally "retain the property" in a Chapter 13 proceeding, does not mean that the claim of exemptions are "not effective" in the Chapter 13 proceeding (Ap A(1), at 3), removing the need for objections and application of time limitations pursuant to Rule 23(C). Had the courts considered and applied the provisions of § 522(1), they would have necessarily come to grips with the fact that the Debtor is entitled to full exemption rights that are clearly effective in the Chapter 13 proceedings. Transouth Financial Corp., 26 B.R. 184; In re Lincoln, 26 B.R. 14; Marsh v. First National Bank, 28 B.R. 270; In re Thurman, 20 B.R. 978. They would also have had to conclude that in the absence of timely objection, within the Chapter 13 proceedings, the claimed exemptions were automatically exempt. In re Keckler, 3 B.R. at 159; In re Mosley, 2 B.R. at 376. Finally, they would have had to conclude that the limitations of Rule 23(C) were fully applicable in a Chapter 13 proceedings.

At the very least it must be admitted that the Debtor raised and presented a meritorious legal issue requiring the court's consideration, as will be examined more fully below.

#### B.

Nor does the situation change "once the proceedings are converted to one under Chapter 7," as the District Court concluded with the Appellate Court's approval. (Ap B, at 5). Pursuant to the provisions of 11 U.S.C. § 348 (a), "Conversion of a case from a case under one chapter of this title to a case under another chapter of this title . . . does not effect a change in the date of the



filing of the petition, the commencement of the case, or the order for relief." When there is a conversion from Chapter 13 to Chapter 7, the debtor is "deemed to have filed a Chapter 7 case at the time the Chapter 13 case was filed." Rosendez v. Linquest, 691 F.2d 397, 399 (8th Cir. 1982); See also In re Langholf, 37 B.R. 414, 419 (Bankr. N.D. Ill. 1984) (Chapter 11 case).

Both the Bankruptcy Code and Rules embody a concept of unitary administration in those cases where a Chapter case is converted into bankruptcy. Rule 122 does not defeat the "one continuous proceeding concept." On the contrary, Rule 122 clearly indicates that it was within the contemplation of the drafters that a Chapter case would "continue as a bankruptcy case." In re Botany Industries, Inc., 40 F. Supp. 234, 236 (E.D. Pa. 1975). The advisory committee notes to Rule 122 state, "The rule is not intended to invalidate any action taken in the superseded case before its conversion to bankruptcy." Bankr. Rule 122, 11 U.S.C. (1982) advisory committee note. Following this concept of unitary administration a debtor is entitled to exemptions effective the date of the filing of the original petition, upon conversion of the case to Chapter 7. See In re Mosley, 2 B.R. at 376, cited with approval in Bankr. Rule 122, 11 U.S.C.S. (Law. Co-op. Supp. 1982).

Nevertheless, in arriving at their ultimate conclusion that the need for the Trustee's objection to claimed exemptions changed "once the proceedings are converted to one under Chapter 7," the District Court with the approval of the Appellate Court entirely failed and refused to consider and apply the provisions of § 348(a) and Rule 122(2), which were raised and presented by the



debtor throughout the case. Again, it must be admitted that these are meritorious legal defenses to the Trustee's objection which required the court's consideration.

We next examine the constitutional implications to be drawn from the lower courts' failure and refusal to consider and apply the Debtor's meritorious legal rights and defenses to the matters at issue.

### C.

Upon the filing of a bankruptcy petition, the debtor's property immediately becomes part of the bankruptcy estate pursuant to 11 U.S.C. § 541. But the exemption section is expressly made dominant over the property section of the Code; exemptions are granted to a debtor "(n)otwithstanding section 541" of the Code. In re Walters, 14 B.R. 92, 94 (Bankr. S.D. West Va. 1981).

Once entitlement to the exemption is determined, the debtor's rights to the property are not further impaired by section 541 of the Code. Id. at 94-95. Moreover absent timely objection, the debtor's claim of exemptions under § 522(1) effects a revesting of all legal and equitable interests in his property in the debtor. Lewis v. Thompson, 21 B.R. 282, 284 (Bankr. M.D. Pa. 1982), modified on remand, 28 B.R. 351, 354 (1983).

The setting apart of such exemptions to which the Debtor here was entitled, vests the Debtor with valuable property interests which are protected by procedural due process requirements guaranteed by the Fifth Amendment. See Board of Regents v. Roth, 408 U.S. 564, 571-72 (1972). The decision of the lower courts, to allow the Trustee's objection to the Debtor's claim of exemptions after the interests comprising such exemptions had already been





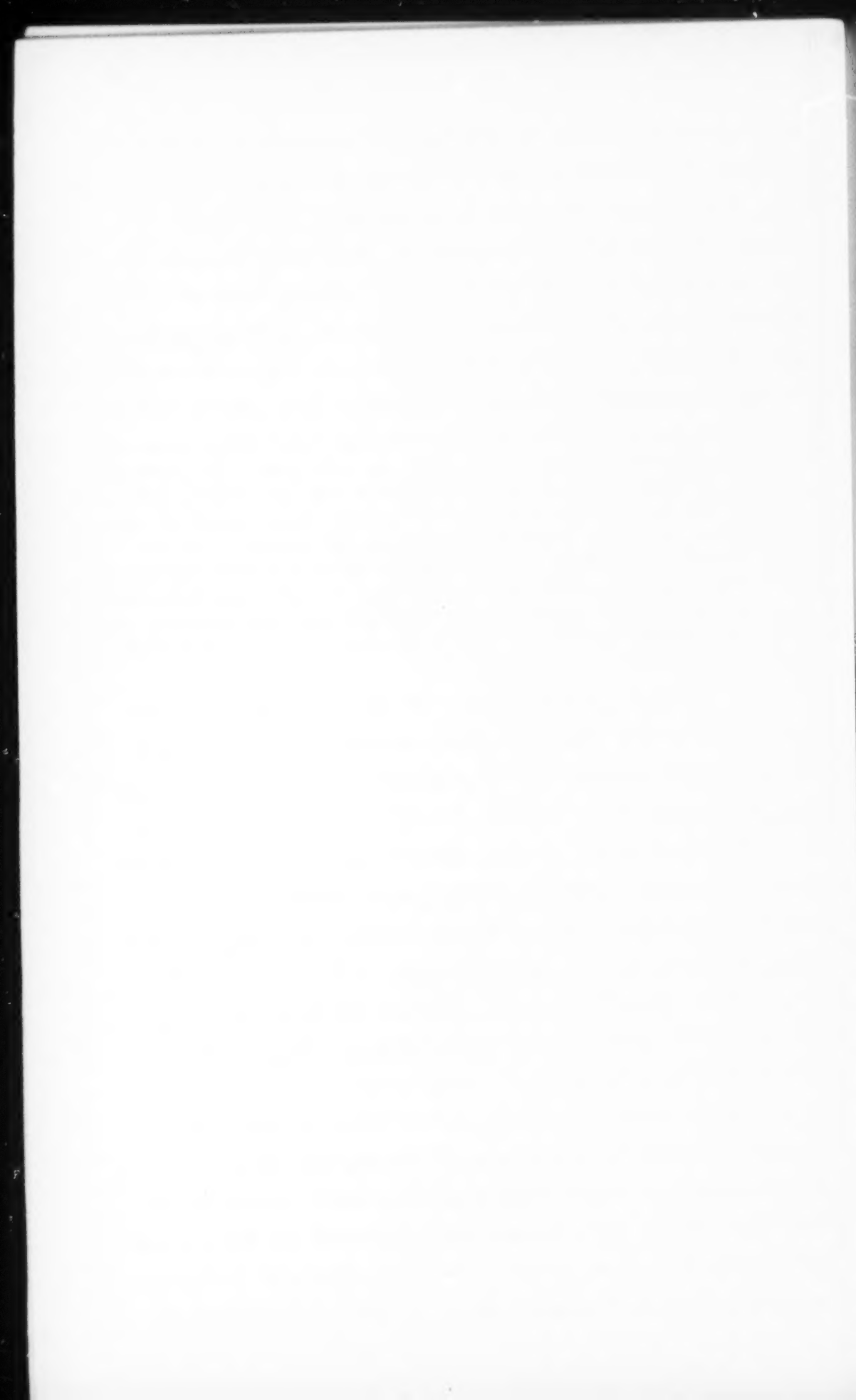
automatically vested in the Debtor pursuant to § 522(1), invaded the Debtor's constitutional property rights.

Due process requires as a minimum, that prior to being deprived of his property by adjudication, the Debtor be granted an "opportunity for hearing appropriate to the nature of the case." Mullane v. Central Hanover Tr. Co., 339 U.S. 306, 313 (1950). As the court stated in Calvin v. Page, 85 U.S. (18 Wall.) 350, 368-69 (1874):

It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is justly administered.

As applied to the nature of the instant case, the "opportunity for hearing" must include the opportunity to raise and present every available defense. Cf. Lindsey v. Normet, 405 U.S. 56, 66 (1972). The Debtor was also entitled to a judicial determination of his vested exemption rights and essential legal defenses, protecting his constitutional property interests. Baltimore & Ohio Railroad Co. v. United States, 298 U.S. 349, 368-69 (1936); Bluefield Co. v. Public Service Commission, 262 U.S. 679, 689 (1923); L.B. Wilson, Inc. v. F.C.C., 170 F.2d 793, 805-06 (D.C. Cir. 1948).

The consistent failure and refusal of the lower courts to consider and apply to the agreed upon facts, the meritorious legal rights and defenses essential to the case, which were raised and presented by the Debtor throughout the case, constitutes "an abuse of judicial discretion of such magnitude as to amount to a denial



of the most fundamental element of due process . . . the right to a full and fair hearing." Duke v. State of Texas, 327 F. Supp. 1218, 1231-32 (E.D. Texas 1971), rev'd on other grounds, 477 F.2d 244 (5th Cir. 1973), reh'g denied, 478 F.2d 1402, cert. denied, 415 U.S. 978 (1974); Bluefield Co. v. Public Service Commission, 262 U.S. at 689; Accord Mathews v. Metropolitan Life Insurance Co., 89 So. 2d 641, 642 (Fla. 1956) (en banc). This is a pattern of "judicial usurpation and oppression, and can never be upheld where justice is justly administered." Galpin v. Page, 85 U.S. at 368-69.

#### CONCLUSIONS

The courts below have so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's power of supervision. The petition for certiorari should, therefore, be granted.

Respectfully submitted,

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Michael L. Schreibman  
1510 Forest Lane  
McLean, Virginia 22101  
Phone: 703/241-1106

August 1, 1984



APPENDIX

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IN THE SUPREME COURT OF THE UNITED STATES  
1984 Term

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No.

MICHAEL L. SCHREIBMAN  
Petitioner,

v.

GERALD M. O'DONNELL, TRUSTEE,  
Respondent.

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Petition For A Writ of Certiorari  
To The United States Court of Appeals  
For The Fourth Circuit

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UNITED STATES BANKRUPTCY COURT  
FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

In the Matter of: :  
MICHAEL L. SCHREIBMAN :  
Debtor. : Case No. 81-01295-A  
Entered:  
March 28, 1983

ORDER

At Alexandria in said District this 28th day of  
March, 1983.

This matter came on by the Trustees Objection to  
Claimed Exemption and the Debtors Motion, pro se, for  
hearing upon that Trustees Objection; and upon the plead-  
ings, the argument of the Trustee and the Debtor and up-  
on all the proceeding had before me in this matter, it  
appearing the Debtor claimed his exemption under 11 U.S.  
C. (b) (1) (sic) and such claim of exemption is specif-  
ically not authorized by State law applicable to this  
proceeding; and it further appearing that the Objection  
of the Trustee was properly made and within the limita-  
tion of Amended Local Rule 23 upon this Chapter 7 pro-  
ceeding of Debtor, it is

ORDERED, that the Objection of the Trustee to the  
claimed exemption of the Debtor be and it hereby is sus-  
tained.

(s)  
\_\_\_\_\_  
United States Bankruptcy Judge



UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

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IN RE: :  
MICHAEL L. SCHREIBMAN, : DEBTOR NO. 81-01295-A  
Debtor. :

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Tuesday, March 22, 1983  
Alexandria, Virginia

HEARING

BEFORE:

The Honorable MARTIN V.C. BOSTETTER, JR.

\* \* \* \*

THE COURT: All right. Anything else?

Well, I have two problems here. One is that this Court ruled not too long ago in the Morgan case that under the Federal Exemption Statute you were not required to file homestead as set forth in state law on or before the date of the filing of the petition. The Fourth Circuit reversed that and has indicated that the law in this circuit is, and that is the law in Virginia as far as the Federal Courts are concerned, that you do have to file a homestead deed on or before the date of filing of your petition. That's the first problem I have. That was not done here, and I could not, under that ruling allow any exemptions that would be due under 34-4 the State Statute by virtue of the mandate of the Fourth



Circuit.

I have to agree, though, on the other hand, assuming that I could overcome that hurdle, which I obviously cannot, I have to agree with the trustee on the basis that the property does, under Federal law, the Federal Bankruptcy Act, revert in the debtor while he's in a 13. Therefore it would be very difficult for trustee to object to exemptions when the exemptions really are not effective yet. The debtor hardly can exempt out property that is still — now belongs to him or is still in his possession.

Accordingly, I — if it were necessary for the objection — I sustain the objection, and if it were necessary to follow, there were any time limit, I feel that it could not run until the 341 hearing in the conversion. Accordingly, I have no alternative but to sustain the objection and deny the exemptions.



IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

MICHAEL L. SCHREIBMAN, )  
Appellant, )  
V. ) CIVIL ACTION NO. 83-370-A  
GERALD M. O'DONNELL, TRUSTEE, ) Entered:  
Appellee. ) July 26, 1983

## MEMORANDUM OPINION

This bankruptcy appeal involves an original Chapter 13 petition later voluntarily converted to a straight bankruptcy under Chapter 7. While under each proceeding, a separate meeting of creditors was held pursuant to 11 U.S.C. § 341. Rule 23(c) of the local rules of the United States Bankruptcy Court for the Eastern District of Virginia provides:

(c) An objection to property claimed by the Debtor under 522(b) of the Bankruptcy Code must be filed within twenty (20) days after the Debtors examination at a (sic) 341 meeting, and copies of the objection forthwith must be mailed or delivered to the Debtor and his Attorney.

No objection to exemptions claimed by the bankrupt was timely filed following the 341 meeting held while the proceedings were under Chapter 13. Such an objection was filed by the trustee one day before the 341 meeting held after the proceedings were converted to a Chapter 7 proceeding. The bankruptcy court held the objections of the trustee were proper. The bankrupt has appealed on the





ground that the objections were untimely because not filed within twenty days of the first 341 meeting.

The judgment of the bankruptcy court will be affirmed. The second 341 hearing was in accordance with that section, and the court does not understand the appellant to contend that a 341 hearing after the conversion was not authorized. It is true that the debtor in a Chapter 13 proceeding may claim exemption even though the property which may be the subject of the exemption is retained by the debtor. But it is for the very reason that he does retain the property that objections to an exemption may not be deemed necessary. Quite another situation arises once the proceedings are converted to one under Chapter 7. Then the property, other than validly exempt property, is not retained by the bankrupt, ne (sic) debtor. The propriety of claimed exemptions becomes very important; a new 341 meeting is appropriate; and the time for filing objections should relate to that new meeting. Timely filed with reference to the Chapter 7 341 meeting, the objections filed by the trustee were properly allowed.

(s)

United States District Judge

Alexandria, Virginia  
July 26th, 1983



Alexandria, Virginia  
July 26th, 1983



UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 83-1825

Entered:  
March 12, 1984

Michael L. Schreiberman  
t/a Michael Lawrence,

Appellant,

v.

Gerald M. O'Donnell,  
Trustee

Appellee.

In Re: Michael L. Schreiberman

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Appeal from the United States District Court for the  
Eastern District of Virginia, at Alexandria. Albert V.  
Bryan, Jr., District Judge. (C/A No. 82-370; Ek. No.  
81-1295-A)

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Submitted: January 11, 1984. Decided: March 12, 1984

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Before PHILLIPS and ERVIN, Circuit Judges, BUTZNER, Senior  
Circuit Judge.

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(Michael L. Schreiberman, Appellant Pro Se. Gerald M.  
O'Donnell, Appellee.)



PER CURIAM:

A review of the record and the district court's opinion discloses that this appeal from that court's order affirming the judgment of the Bankruptcy Court is without merit. Because the dispositive issues recently have been decided authoritatively, we dispense with oral argument and affirm the judgment below on the reasoning of the district court. Schreiber v. O'Donnell, C/A No. 83-370; Bk. No. 81-1295-A (E.D. Va., July 25, 1983).

AFFIRMED.





UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 83-1825

Entered:  
May 3, 1984

Michael L. Schreiberman,  
t/a Michael Lawrence,

Appellant,

versus

Gerald M. O'Donnell,  
Trustee,

Appellee,

In Re: Michael L. Schreiberman

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O R D E R

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Upon consideration of the appellant's pro se petition for rehearing and suggestion for rehearing en banc, and no judge having requested a poll on the suggestion for rehearing en banc,

It is ADJUDGED and ORDERED that the petition for rehearing is denied.

Entered at the direction of Judge Phillips for a panel consisting of Judge Phillips, Judge Ervin, and Judge Butzner.

For the Court,  
/s/ William K. Slate, II

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CLERK